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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,430	07/31/2001	Kevin H. Hansen	IDF 1660 (4000-04700)	.4192
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			2151	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 09/919,430	Applicant(s) HANSEN ET AL.	
	Examiner John B. Walsh	Art Unit 2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE of 1/3/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6,10-20 and 29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,10-20 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, 6-10 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,974,237 to Shurmer et al.

As concerns claim 1, a gateway (column 4, line 59); a switch (column 4, line 38); a data routing system (figure 4; communications network); a bandwidth measurement device (abstract, measure network performance; column 6, line 65-bandwidth is parameter measured) configured for independently determining upload or download data transfer rates between said client and said gateway, and for distinguishing the upload or download data transfer rate between the client and the gateway from the upload or download data transfer rate between the client and the network (abstract, parameters of individual components of network, such that transfer rates for any leg/path of the system can be determined, such as from a client to a gateway and a client and a network; column 7, lines 10-13-receiving and sending, upload and download); a measurement application (column 5, lines 39-40; column 2, line 51-column 3, line 20-means for managing and means for collecting) resident on said bandwidth measurement device, said measurement application determining said upload or download data transfer rates for said bandwidth measurement device; and an applet (column 5, lines 39-42) maintained by said measurement application suitable for download (column 2, lines 54-55; column 3, lines 11-18) to said client; configured for independently determining upload or download data transfer rates between said

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client and said service node, wherein if determining said upload data transfer rate between said client and said service node, said downloaded applet generates said data packets (column 7, lines 11-14-interrogation signals) originating at said client (column 7, lines 10-14) and if determining said download data transfer rate between said service node and said client, said downloaded applet determines said download data transfer rate based upon an analysis of said data packets generated by said measurement application upon arrival at said client (column 7, lines 10-14).

As concerns claim 2, a router (column 8, lines 59-60-switch routes data).

As concerns claim 4, an ATM edge switch (column 8, lines 37-39; figure 19).

As concerns claim 6, a server (column 5, line 15).

As concerns claim 7, a measurement application (figures 2 and 3; column 7, lines 27-45; column 5, lines 39-40; column 2, line 51-column 3, line 20-means for managing and means for collecting).

As concerns claim 8, the use of the term “if” is a conditional statement, wherein the limitation need not be satisfied if the condition is false.

As concerns claim 10, wherein a web application resides on said bandwidth measurement server, said client accessing said measurement application via said web application (figure 8; signal presentation layer).

As concerns claim 11, wherein said bandwidth measurement server further comprises a measurement database (22) coupled to said measurement application, said measurement database maintaining data collected during measurement of said upstream and/or downstream data transfer rates.

As concerns claim 29, the upload or download transfer rate is compared to the baseline data transfer rate to determine if problems exist (column 7, lines 37-52).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5 and 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,974,237 to Shurmer et al. as applied above.

As concerns claim 5, it would have been an obvious design choice for said service node is an ISP and said network is the Internet. These limitations do not appear to effect the patentable operation of the invention and would work equally well with another network.

As concerns claim 12, Shurmer et al. disclose all of the limitations (see claim 1 above) except for the xDSL lines. This appears to be an obvious design choice since the network would work equally well with other communication lines and it does not appear to effect the patentable operation of the invention.

As concerns claim 13, a router (column 8, lines 59-60-switch routes data).

As concerns claim 14, a gateway (column 4, line 59).

As concerns claim 15, a terminal (figure 1) and said bandwidth measurement device is coupled to the router (coupled via the communication connections of the network).

As concerns claim 16, a server (column 5, line 15).

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As concerns claim 17, a measurement application (figures 2 and 3; column 7, lines 27-45; column 5, lines 39-40; column 2, line 51-column 3, line 20-means for managing and means for collecting).

As concerns claim 18, wherein a web application resides on said bandwidth measurement server, said client accessing said measurement application via said web application (figure 8; signal presentation layer).

As concerns claim 19, wherein said bandwidth measurement server further comprises a measurement database (22) coupled to said measurement application, said measurement database maintaining data collected during measurement of said upstream and/or downstream data transfer rates.

Response to Arguments

5. Applicant's arguments filed December 4, 2006 have been fully considered but they are not persuasive.

The applicant argues Shurmer et al. do not disclose an applet. The claim term "applet" has been given the broadest reasonable interpretation that the examiner has interpreted as an application or program. Shurmer et al. disclose an application/program – "a program for operating the data monitoring apparatus" (col. 5, lines 39-40). The examiner has given the term "web application" the broadest reasonable interpretation and has interpreted as an application or program accessed over a network.

The applicant argues Shurmer et al. do not disclose directly monitor data traffic between a specific network clients and a network gateway or distinguish the bandwidth between a client and a network gateway from the bandwidth between the client and the network as a whole as

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claimed in claims 1 and 12. Shurmer et al. disclose monitoring the network as a whole and individual aspects of the network (column 5, lines 10-13; column 6, lines 51-52).

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Walsh whose telephone number is 571-272-7063. The examiner can normally be reached on Monday-Thursday from 7:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571-272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


John B. Walsh
Primary Examiner
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